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1176 HOWELL STREET, CODE 000C
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NEWPORT RI 02841

In re Application of	:	
Michael T. Ansay et al.	:	DECISION ON PETITION
Application No. 10/672,969	:	TO WITHDRAW THE
Filed: September 29, 2003	:	HOLDING OF ABANDONMENT
For: SUBMARINE AIR BAG LAUNCH	:	
ASSEMBLY	:	

This is a decision on applicant's renewed petition to withdraw the holding of abandonment, filed in the United States Patent and Trademark Office (USPTO), on May 24, 2005. There is no fee for this petition.

The petition is **GRANTED**.

A review of the file record reveals that the application became abandoned for failure to respond to the Office action mailed on April 02, 2004, which set a three-month extendable period for response. A Notice of Abandonment was mailed on December 06, 2004.

Applicant's petition contends that the Office action mailed on April 02, 2004 was never received.

There is a strong presumption that Office communications properly addressed and delivered to the United States Postal Services, are in fact delivered to the addressee. An allegation that the Office communication was not received must be overcome by a showing that it was not received.

The showing required to establish non-receipt of an Office communication must include all of the following requirements:

- (1) A statement from the practitioner stating the Office communication was not received by the practitioner;
- (2) A statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and
- (3) A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

In support of the contention of non-receipt, applicant has provided a statement from the practitioner stating that the Office communication was not received, a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received, a copy of the file jacket, a copy of the docket record where the non-received Office action would have been entered had it been received and docketed, and, a copy of the docket records showing all responses due by practitioner's office around the three-month due date. This evidence is acceptable proof of non-receipt as provided by 1156 OG 53.

The application is being forwarded to the Supervisory Legal Instruments Examiner with instructions to withdraw the abandonment, return the application to pending status and to redate and remail the Office action mailed April 02, 2004 based on the reasoning in the case of *Delgar v. Schuyler*, 172 USPQ 513. It is noted that applicant has provided a response to this Office action along with this renewed petition.

It is noted that the correspondence received September 23, 2004 was to associate the application with Applicant's customer number. As this correspondence was submitted well after the Office action mail date of April 02, 2004 it has no bearing on the instant decision.



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KJD/rjc: 08/18/05